

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Civil Action No.: 3:13 CV 00703-GCM

FMW/MJH at 2604 HILLSBOROUGH, LLC,)
)
Plaintiff,)
vs.)
)
WSA Construction, LLC; et. al.,)
)
Defendants.)
_____)

ORDER

THIS MATTER is before the Court upon the Defendants’ Sunbelt Rentals, Inc. (“Sunbelt Rentals”), Talbert Building Supply, Inc. and OC Drywall & Stucco, and Motion to Modify the Preliminary Injunction entered on January 13, 2014 [Doc 10] to permit the Defendants to file an Involuntary Petition for Chapter 7 Bankruptcy as to the Defendant WSA Construction, LLC.

For the reasons set forth below, the Defendants’ Motion to Modify the Preliminary Injunction is **ALLOWED**.

I. BACKGROUND

Plaintiff (“FMW/MJH”) owns a student housing development located at 2604 Hillsborough Street in Raleigh, North Carolina (“the Premises”). (Compl. at 6). On October 19, 2012, FMW/MJH entered into a construction contract with general contractor WSA Construction, LLC (“WSA”), under which WSA agreed to furnish the labor and materials necessary to complete the development (“the Project”). (*Id.*). The contract required that WSA turn over a substantially completed Project to FMW/MJH on or before June 28, 2013. (Compl. at 8). WSA independently engaged multiple subcontractors and suppliers to provide labor and

materials for the Project.

The Project was not substantially completed by June 28, 2013. In its Complaint, FMW/MJH alleges it has disbursed to WSA a total of \$1,576,130.79 of the agreed upon contract sum of \$1,832,556.55. (Compl. at 7). FMW/MJH alleges that as a result of liquidated damages, outstanding warranty claims, and FMW/MJH's costs incurred to remedy and complete the Project, FMW/MJH owes no additional portion of the contract sum to WSA. (*Id.*). In October, 2013, FMW/MJH began receiving lien documents and other forms of notice from subcontractors requesting payment from FMW/MJH of amounts allegedly unpaid by WSA. (*Id.* at 8–9). The subcontractors have asserted competing claims to the remaining balance of the contract sum, and the total amount of these claims substantially exceeds the remaining balance. (*Id.* at 9). WSA has no intention or capability of performing any further obligations to FMW/MJH under the contract. (*Id.* at 9).

On December 23, 2013, FMW/MJH filed a Complaint in Interpleader (Doc. No. 1) pursuant to 28 U.S.C. § 1335, in order to resolve the multiple competing claims against FMW/MJH, its funds, and the Premises in a single proceeding. (Doc. No. 133 at 4). FMW/MJH named as defendants all known subcontractors engaged by WSA on the Project. (*Id.*). In this action, FMW/MJH has sought, among other relief, a declaration that the lien claims filed by the subcontractors against FMW/MJH are improper and that FMW/MJH is not required to pay the subcontractors for services at the Premises.

II. THE MOTION

The Defendants Sunbelt Rentals, Talbert Building Supply, Inc. and OC Drywall & Stucco are named as defendants in this proceeding because they provided equipment, supplies and/or services to the construction project under contracts with the Defendant WSA

Construction, LLC. The moving Defendants are eligible to file a petition in the Bankruptcy Court pursuant to *11 U.S.C §303(b)*; WSA is an entity against which an order for relief may be entered in Bankruptcy Court; and WSA is generally not paying its debts as they become due.

The Preliminary Injunction restrains the Defendants from filing the Involuntary Petition for Chapter 7 Bankruptcy. The Defendants Sunbelt Rentals, Talbert Building Supply, Inc. and OC Drywall & Stucco move the Court to modify the Preliminary Injunction entered on January 13, 2014 so that it does not restrain the Defendants from filing an Involuntary Petition for Chapter 7 Bankruptcy as to the Defendant WSA Construction, LLC.

CONCLUSION

IT IS THEREFORE ORDERED that the Defendants' Motion to Modify the Preliminary Injunction is **ALLOWED**.

Signed: August 21, 2014

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

